REGISTERED No. M. 7463

KERALA GAZETTE

SUPPLEMENTS

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PART I

GOVERNMENT OF KERALA

Agriculture (Agriculture -B) Department

NOTIFICATION

"No. ESS.-COM.—LAND UTILISATION—KERALA.

(Amendment).

Order Ag. B4-56854/60/Agri. B.

Dated, Trivandrum, the 22nd June 1961.

In exercise of the powers conferred by sub-section (1) and clause (b) of sub-section (2) of Section 3 of the Essential Commodities Act, 1955 (Central Act 10 of 1955) read with the Notification of the Government of India in the Ministry of Food and Agriculture S. R. O. 3950 dated the 9th December, 1957 and with the prior approval of the Central Government, the Government of Kerala hereby make the following amendments to the Kerala Land Utilisation Order, 1958, namely :—

AMENDMENTS

In Clause 4-A of the Kerala Land Utilisation Order, 1958,—

(a) in sub clause (1) for the words "during the last three years", the words "in all the three years immediately preceding the date of such notice" shall be substituted.

(b) sub clause (3) shall be renumbered as sub clause (4) and before the sub clause as so renumbered, the following sub clause shall be inserted, namely :—

"(3) If, within ten days from the date of service of the notice or within such further period as the Collector may grant in this behalf, the holder of the land or the tenant or the lessee, as the case may be, shows to the satisfaction of the Collector that the cultivation of the land with paddy has resulted in loss in all the three years immediately preceding the date of such notice and that the land is fit for cultivation of food crops other than paddy, the Collector shall cancel the notice".

By order of the Governor,

C. THOMAS,

Secretary.

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Kerala Gazette No. 27 dated 4th July 1961.

PART 1

GOVERNMENT OF KERALA

Agriculture (Co-operation) Department

NOTIFICATION

No. 34682/58/ADC3. *Dated, Trivandrum 22nd June 1961*

The following draft amendment to the Rules for the grant of loans to Co-operative Marketing and Credit Societies for the construction of godowns published under Notification No. C3-2057/57/AD dated 16-10-1957 in Part I of the Kerala Gazette dated 22-10-1957 as subsequently amended, which the Government of Kerala propose to make in exercise of the powers conferred by sections 31 and 65 of the Madras Co-operative Societies Act, 1932 (Act VI of 1932) and sections 36 and 96 of the Travancore-Cochin Co-operative Societies Act, 1951 (Act X of 1952) are hereby published for general information as required by sub-section 3 of Section 65 of the Madras Co-operative Societies Act, 1932 (Act VI of 1932) and sub-section (3) of Section 96 of the Travancore-Cochin Co-operative Societies Act, 1951 (Act X of 1952) respectively.

Notice is hereby given that the draft will be taken into consideration on or after 24-7-1961 and that any objection or suggestion which may be received from any person with respect thereto before the date specified above will be considered by Government. Objections and suggestions shall be addressed to the Secretary to Government, Agriculture (Co-operation) Department Trivandrum.

DRAFT AMENDMENT.

After Rule 9 of the said rules, the following shall be added as Rule 9 A, namely:—

9 A. The Registrar may, after such enquiry as he deems necessary, either sanction the loan if he is competent to sanction or make a recommendation to the Government for the sanction

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of the loan. The maximum limits of the amount of loan that can be granted to various types of societies are the following:—

(1)	Credit Societies	Rs. 7,500 (Rs. Seven thousand five hundred)
(2)	Primary marketing societies	Rs. 18,750 (Rs. Eighteen thousand seven hundred and fifty)
(3)	District marketing societies	Rs. 37,500 (Rs. Thirty-seven thousand five hundred)
(4)	Apex marketing societies	Rs. 75,000 (Rs. seventy-five thousand)

The loan and subsidy together to be sanctioned to a society shall be equal to the estimate amounts or the limit prescribed above, whichever is less. The subsidy shall not exceed one third of the loan amount.

By order of the Governor.

C. THOMAS,

Secretary.

Kerala Gazette No. 27 dated 4th July 1961.
PART I

GOVERNMENT OF KERALA

Agriculture (Food A) Department

NOTIFICATION

No. 35944-Fd. A3/61/Agri.

Dated, Trivandrum, 22nd June 1961.

The Government of India, Ministry of Food and Agriculture, (Department of Food) Order GSR. 784 dated 7th June, 1961, published in the Gazette of India Extraordinary, Part II—Section 3—Sub-section (i) dated June 7, 1961/Jyaistha 17, 1883 is republished for general information.

By order of the Governor,
C. NARAYANA PODUVAL,
Deputy Secretary.

Ministry of Food and Agriculture (Department of Food)

ORDER

New Delhi, the 7th June 1961.

G. S. R. 784.—In exercise of the powers conferred by section 3 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby makes the following order further to amend the Wheat Roller Flour Mills (Licensing and Control) Order, 1957, namely:—

1. This Order may be called the Wheat Roller Flour Mills (Licensing and Control) Fourth Amendment Order, 1961.

2. In the Wheat Roller Flour Mills (Licensing and Control) Order, 1957, (hereinafter referred to as the said Order), after clause 7, the following clause shall be inserted, namely:—

"7A. Deposit of Security.—(1) Every person who, at the commencement of the Wheat Roller Flour Mills (Licensing and Control) Fourth Amendment Order, 1961, holds a licence shall, within 2 months of such commencement, and every person applying for licence after such commencement shall, before the licence is issued to him, deposit with the licensing authority security of the value of Rs. 5,000 for the due performance of the conditions subject to which the licence is granted to him.

(2) The security referred to in sub-clause (1) may be in any of the following forms, namely:—

(a) Demand Draft on the State Bank of India endorsed in favour of the licensing authority;

(b) Deposit-at-call receipt of the State Bank of India endorsed in favour of the licensing authority;

(c) Government securities at 5% below market price or at face value, whichever is less, endorsed in favour of the licensing authority;

(d) National Savings Certificates, 12-year National Plan Saving Certificates and Treasury Receipts endorsed in favour of the licensing authority;

(e) Post Office Savings Pass Book, the Account being pledged to the licensing authority;

(f) Cash deposit into Government treasury under head "revenue deposits".

3. After clause 11 of the said Order, the following clause shall be inserted, namely:—

"11A. Forfeiture of Security deposit.—(1) Without prejudice to the provisions of clause 11, if the licensing authority is satisfied that a licensee has contravened any of the conditions of the licence and that a forfeiture of the security deposit is called for, it may by order forfeit the whole or any part of the security deposited and communicate a copy of the order to the licensee.

(2) Where the security deposited by a licensee or any portion thereof is forfeited under sub-clause (1), the licensee shall deposit the amount so forfeited—

(i) where no appeal against the order of forfeiture has been filed, within two months from the date on which the order was communicated to him; or

(ii) where an appeal against such order has been filed and dismissed, within 7 days of the dismissal of the appeal".

4. In clause 12 of the said Order, after the word and figures "clause 11", the words, figures and letter "or clause 11A" shall be inserted.

[No. 205 (GENL) (4)/523/61-PY. II]

B. P. Bagchi,

Joint Secretary.

Kerala Gazette No. 27 dated 4th July 1961.
PART I.

GOVERNMENT OF KERALA

Abstract

RULES—K. S. R.—LEAVE WITHOUT ALLOWANCES FOR THE TREATMENT OF T. B. OR LEPROSY—EX GRATIA ALLOWANCE—AMENDMENT ISSUED.

FINANCE DEPARTMENT

G. O. (P) 276/61/Fin. Dated, Trivandrum, 27th June 1961.

NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Kerala hereby makes the following amendments to the Kerala Service Rules namely:—

AMENDMENTS

C. S. No. 18/61 DATED 27-6-1961.

In Part I of the said Rules.

1. In Rule 90 (iii), the clauses (a), (b), (c) and (d) shall be deleted.

2. After rule 90, the following shall be inserted as rule 90 A, namely:—

90 A. (a) A non-gazetted Officer drawing a pay not exceeding Rs. 100 per mensem who is granted leave without allowances for the treatment of T. B. or Leprosy may be granted an exgratia allowance equal to half the pay he was drawing immediately prior to commencement of the leave, subject to a minimum of Rs. 25 per mensem.

(b) The allowance will be admissible only when the Officer is not eligible for any other leave without allowances.

(c) The allowance will be granted irrespective of whether the patient undergoes treatment as an in-patient or as out-patient under the direction of a Civil Surgeon.

(d) The payment of the allowance will be made only on the production of a certificate issued by the Medical Officer-in-Charge of the Sanatorium/ Hospital or by one not below the rank of a Civil Surgeon to the effect that the patient has been under his treatment for T. B. or Leprosy during the period for which the allowance is claimed.

Note 1. The concession of leave without allowance upto eighteen months will be admissible also to an Officer who for want of accommodation in any recognised sanatorium at or near the place of his duty receives treatment at his residence under a recognised Tuberculosis Specialist or Leprosy Specialist and produces a certificate signed by that specialist to the effect that he is under his treatment and that he has reasonable chances of recovery on the expiry of the leave recommended.

" 2. The leave without allowances under this Rule will be admissible only to those officers who have been in continuous Government service for a period exceeding one year.

" 3. The lists of recognised Tuberculosis Institutions and Leprosy Institutions are given in Appendix V".

This notification shall be deemed to have come into force with effect from 1-11-1959.

By order of the Governor,
M. MUHAMMAD IBRAHIM,
Joint Finance Secretary.

To

The Accountant General, Kerala.

All Heads of Departments and Offices.

The Registrar of High Court (with C. L.)

The Registrar, University of Kerala (with C. L.)

The Secretary, Public Service Commission (with C. L.)

The Secretary to Governor.

The Private Secretary to the Chief Minister and other Ministers.

The Secretaries, Additional Secretaries, Joint Secretaries, Deputy Secretaries and Assistant Secretaries to Government.

The Departments of the Secretariat.

The Personal Clerk to the Chief Secretary.

The Superintendent of Government Presses, Trivandrum.

Kerala Gazette No. 27 dated 4th July 1961.
PART I

GOVERNMENT OF KERALA

Abstract

RULES—KERALA SERVICE RULES—POLICE OFFICERS—AMENDMENT ISSUED.

FINANCE DEPARTMENT

G. O. (P) 277/61/Fin. **Dated, Trivandrum, 27th June 1951.**

Read:—G. O. (MS.) 72/61/Fin. dated 14-2-1961.

NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Kerala hereby makes the following amendment to Kerala Service Rules, namely:—

AMENDMENT

C. S. No. 19/61. *dated 27-6-1961.*

In Part III of the said Rules, in rule 105 the following shall be inserted as Note 2,

Note 2. All cases of injury/death suffered by Police Officers who are in receipt of a pay of less than Rs. 200 per mensem in the course of, and as a consequence of performance of their duties will be regarded as cases of injury/death due to special risk of office and that in all such cases gratuity under the K. S. R. will be payable at the enhanced rate of 8 month's pay."

2. The existing Note shall be numbered as Note (1).

By order of the Governor,
M. MUHAMMAD IBRAHIM,
Joint Finance Secretary.

To

The Accountant General.
All Heads of Departments and Offices.
The Secretary, Public Service Commission (with C. L.)
The Secretary to the Governor.
The Registrar of High Court, (with C. L.)
The Registrar of Kerala University, Trivandrum (with C. L.)
All Departments of the Secretariat.
The Secretaries, Additional Secretaries, Joint Secretaries, Deputy Secretaries and Assistant Secretaries to the Government.
The Private Secretary to the Chief Minister and other Ministers.
The Superintendent of Government Presses, Trivandrum

Kerala Gazette No. 27 dated 4th July 1961.
PART I

GOVERNMENT OF KERALA

Abstract

RULES—KERALA SERVICE RULES—AMENDMENTS ISSUED.

FINANCE DEPARTMENT

G. O. (P) 274/61/Fin. **Dated, Trivandrum, 27th June 1961.**

NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Kerala hereby makes the following amendments to the Kerala Service Rules, namely :—

AMENDMENTS

C. S. No. 16/61 dated 27-6-1961.

In Part I of the said Rules,

in Rule 56(5), after Note 4, the following shall be added as an exception, namely :—

"Exception—The order of the revising or appellate authority regarding the treatment of the period of absence from duty passed under this note is absolute and no sanction of a higher authority is necessary for the grant of leave without allowances in excess of three months in so far as officers not in permanent employ are concerned".

C. S. No. 17/61 dated 27-6-1961.

In sub rule (ii) of rule 88, in Part I, the following shall be added as an exception, namely :—

"Exception—When a period of suspension is retrospectively treated as leave without allowances by the revising or appellate authority the limitation of admissible leave without allowances to three months to officers not in permanent employ will not apply".

By order of the Governor,
M. MUHAMMAD IBRAHIM,
Joint Finance Secretary.

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To

The Accountant General

All Heads of Departments and Offices

The Registrar of High Court (with C. L.)

The Secretary, Kerala Public Service Commission (with C. L.)

The Registrar, University of Kerala (with C. L.)

The Departments and Sections of the Secretariat

All Secretaries, Additional Secretaries, Joint Secretaries, Deputy Secretaries and Assistant Secretaries to Government

The Private Secretaries to the Chief Minister and other Ministers

The Confl. Clerk to the Chief Secretary to Government

The Superintendent, Government Presses, Trivandrum.

Kerala Gazette No. 27 dated 4th July 1961.
PART 1

GOVERNMENT OF KERALA

Abstract

KERALA GOVERNMENT SERVANTS MEDICAL BENEFIT RULES, 1960—TREATMENT IN PRIVATE INSTITUTIONS—REIMBURSEMENT OF COST OF MEDICINES—AMENDMENT ISSUED—

HEALTH AND LABOUR DEPARTMENT—(HEALTH E)

G. O. (P) 2517/61/Health. **Dated, Trivandrum, 20th June 1961.**

Read:—

1. G. O. (P) 29/60/Health dated 12-1-1960.
2. G. O. (P) 501/61/Health dated 20-4-1961.
3. Letter No. TM. I/10-179/87 dated 6-5-1961 from the Accountant General.

NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 of the constitution of India, the Governor of Kerala hereby makes the following amendment as a 'Note' under rule 8(3) of the Kerala Government Servants Medical Attendance Rules 1960, issued with G. O. (P) 29/60/Health dated 12-1-1960 and published in the Kerala Gazette No. 6 dated the 9th February 1960, namely:—

"**NOTE:**

Private institutions recognised for treatment in Rule 8 (3) should be resorted to only in cases of emergency and not as a routine course. Bills for reimbursement submitted as per the above rules should be certified by the nearest District Medical Officer of Health as to the emergency of each case".

The G. O. read as second paper above is cancelled.

By order of the Governor,
V. V. JOSEPH,
Secretary.

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Kerala Gazette No. 27 dated 4th July 1961.

PART I

GOVERNMENT OF KERALA

Health and Labour Department (Municipal Rules)

ERRATUM

No. 54681/M1. Rules/61.

Dated, Trivandrum, 28th June 1961.

In the Municipal Councillor's Election Rules, 1961 published in Gazette Extraordinary No. 66, Vol. VI. dated 10-6-1961, on page 1, the following number and date shall be inserted after the heading 'NOTIFICATION', namely:—

"G. O. (P) 639/61/H & LD, dated 10-6-1961".

By order of the Governor,
K. C. SANKARANARAYANAN,
Additional Secretary.

G. 2187.

Kerala Gazette No. 27 dated 4th July 1961.

PART I

GOVERNMENT OF KERALA

Health and Labour Department (Labour A)

NOTIFICATION

No. L4-18224/61-3/HLD.

Dated, Trivandrum, 16th June 1961.

In exercise of the powers conferred by sub-section (1) of section 85 of the Factories Act, 1948 (Central Act 63 of 1948), the Government of Kerala hereby declare that the provisions of the said Act specified in column (3) of the schedule below shall apply to the establishments specified in column (1) situated in the places shown in column (2) thereof:—

SCHEDULE.

Serial No. and name of the factories.	*Situation of the factories.*	*Provisions of sections of the Factories Act, 1948 made applicable.*
(1)	(2)	(3)
1 Natham Shearing Factory	Sanadanam Ward, Alleppey	1 to 26, 28 to 115, 117 and 118
2 Crown Shearing Factory	Vazhicherry, Alleppey	do.
3 Nirmala Shearing Factory	Vazbicberry, Alleppey	do.
4 Mats Finishing Company	Vazbicherry, Alleppey	do.
5 United Shearing Factory	Vazhicberry, Alleppey	do.
6 G. P. Coir Mart	Factory Ward, Alleppey	do.
7 Kerala Corporation	Factory Ward, Alleppey	do.
8 Kuruvilla & Co.	West of Shavacotta Bridge, Alleppey	do.
9 Selvan Industries	Canal Road, Alleppey	do.
10 Coir Service Combine	Jubilee Road, Alleppey	do.
11 Elphdan Co.	Sea View Ward, Alleppey	do.
12 Vaikom Coir Works	Vellakinar Ward, Alleppey	do.

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(1)		(2)	(3)
13	A. P. Subramanian's Shearing Factory	Vellakinar Junction, Alleppey	1 to 26, 28 to 115, 117 and 118
14	P. K. Vijayan's Shearing Factory	Vellakinar Ward, Alleppey	do.
15	Shertalai Coir Mats and Matting C. S. Ltd., No. 240	Near Munsiff Court's Bridge, Shertallai	do.
16	Variamparambil Coir Factory	Thykattuserry, Shertallai	do.
17	The Mayithara Coir Factory (P) Ltd.	Shertallai	do.

By order of the Governor,
K. C. SANKARANARAYANAN,
Additional Secretary.

Kerala Gazette No. 27 dated 4th July 1961.
PART I

GOVERNMENT OF KERALA

Health and Labour Department

NOTIFICATION

No. 44092|L5|61|HLD. *Dated, Trivandrum, 18th May 1961.*

The Preliminary award of the Industrial Tribunal, Kozhikode, in respect of the dispute between the Managing Director, Kulappuram Spinning and Weaving Mills Ltd., Mandur P.O., and the Director, Excelsior Handloom and Weaving Factory, Mandur and its branches at Cannanore and Peerakanthadam and their workmen represented by the Secretary, Kulappuram Spinning and Weaving Mills Workers Union, Mandur P.O., and the Secretary, Kulappuram Spinning and Weaving Mills Labour Union, Mandur P.O., received by Government on 15-5-1961 is hereby published under Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,
K. C. SANKARANARAYANAN,
Additional Secretary.

Before the Arbitrator

INDUSTRIAL TRIBUNAL, KOZHIKODE

(Dated this the 12th day of May 1961)

Present:

SHRI V. U. JOSEPH, B.A., B.L.,
Industrial Tribunal, Calicut and Ernakulam

M. P. No. 151 of 1960

in

ARBITRATION No. 1 of 1960

Between

THE MANAGING DIRECTOR,
KULAPPURAM SPINNING AND WEAVING MILLS, LTD., MANDUR-P.O.

And

1. THE SECRETARY,
KULAPPURAM SPINNING AND WEAVING MILLS WORKERS' UNION, MANDUR-P.O.

2. THE SECRETARY,
KULAPPURAM SPINNING AND WEAVING MILLS LABOUR UNION, MANDUR-P.O.

And

M. P. No. 152 of 1960

in

ARBITRATION No. 2 of 1960

Between

The Director, Excelsior Handloom and Weaving Factory, Mandur and its branches at Cannanore and Peerakanthadam

And

1. The Secretary, Kulappuram Spinning and Weaving Mills Workers Union, Mandur-P.O.

2. The [illegible], Kulappuram Spinning and Weaving Mills Labour Union, Mandur-P.O.

Representatives: –

SRI C. ACHUTHA MENON, B.A.,B.L., Advocate, Calicut.	For *Management.*
SRI K. ALIKOYA, B.A., B.L., Advocate, Calicut.	For *First Union*
SRI P. KUNHAPPA NAMBIAR, Secretary of Labour Union.	For *Second Union.*

PRELIMINARY AWARD

By order No. 21258|L5|60|H&LD of the Health and Labour Department of the Government of Kerala dated 3rd June, 1960 the dispute between the management of Kulappuram Spinning and Weaving Mills Ltd., Mandur represented by Sri Sumithran Aaron and their workmen represented by Sri Payyaratta Raman and Sri Kunhappa Nambiar on behalf of the Kulappuram Spinning and Weaving Mills Workers' Union, and the Kulappuram Spinning and Weaving Mills Labour Union, Mandur respectively was referred to my Arbitration under section 10(a) of the Industrial Disputes Act and the same is numbered as Arbitration No. 1 of 1960 on the files of this court. By order No. 39315|L5|60|H&LD of the Health and Labour Department of the Government of Kerala dated 29th June, 1960, the dispute between the management of Excelsior Handloom Weaving Factory Mandur and its branches at Cannanore and at Peerakanthadam represented by Sumithran Aaron and their workmen represented by (1) Sri Payyaratta Raman and (2) Kunhappa Nambiar on behalf of the Kulappuram Spinning and Weaving Mills Workers' Union, Mandur and the Kulappuram Spinning and Weaving Mills Labour Union, Mandur-P.O. respectively was referred to my Arbitration under section 10 (A) of the Industrial Disputes Act, 1947 and the same is numbered as Arbitration No. 2 of 1960 on the files of this court.

2. In the reply statements of the managements in Arbitration Nos. 1 and 2 of 1960 they have raised a contention that the Arbitration agreement has been forced on them by the coercive effect of an illegal strike. The strike took place during the pendency of I. D. 91 of 1959. I. D. 91|59 was between the same management and workmen. The strike also took place during the pendency of the conciliation proceedings leading to this arbitration agreement and long before the submission of failure report by the conciliation officer. The management contends that a party cannot be allowed to reap the benefits of its own illegal contract. The agreement is vitiated by this illegality and therefore the reference is void. The arbitrator does not get jurisdiction by virtue of a reference brought about by an agreement forced on one of the contracting parties by illegal contract resulting in coercion. It is also prayed by the management that this jurisdiction matter may be tried as a preliminary issue.

3. In the union rejoinders they have controverted this question regarding jurisdiction. The unions contend that they resorted only peaceful strike which certainly was not illegal or unjustified. The management refused to attend the conciliation meetings convened by the conciliation officer and the attitude of the management was recalcitrant from the beginning. According to them there was no coercion from the side of

the workers and the arbitration agreement was also signed by management out of free will and in the presence of responsible officers. The agreement is not vitiated by any of the grounds alleged by the management. The agreement is perfectly valid and the court has got jurisdiction to pass an award regarding the matters referred to Arbitration.

4. The management filed M.P. 151 and 152 of 1960 in Arbitration Nos. 1 and 2 of 1960 respectively requesting for the trial of the jurisdiction matter as a preliminary issue. In this preliminary petitions the management raised more or less the same grounds which they have raised in the reply statements. The union filed written objections refuting the allegations in the petitions. The question whether the Arbitration agreements were brought out by coercion was tried as a preliminary issue. As the parties and the matters involved in both M.P. matters are one and the same both petitions were jointly tried and one common order is passed.

5. In the M. P. matters the management examined MWs.1 to 3 and did not mark any document. The union examined WW1 and marked Exts. W1 to W4. MW1 Sri Sumithran Aaron was the Acting Managing Director of the Company. He deposed that the strike was started on 18-4-1960 and was withdrawn on 20-4-1960, on signing the arbitration agreement. During this period I.D. 91 of 1959 between the parties was pending in this court and conciliation proceedings was also pending. The arbitration agreement was signed due to the fear brought about by strike and not voluntarily or out of free will. The strikers picketed during these days and did not permit anybody to enter the factory. The Sub-Inspector of Police told him that he could permit the people to enter the factory only on getting additional police force. At the time of the strike there was in the factory a large quantity of wet yarn and the same would be destroyed if not dried, within three or four days' time. In ordinary strikes a skeleton staff is allowed to work to prevent the destruction of goods. The strikers in the factory in this case did not allow this. It is to avoid the destruction of these wet yarn also that the arbitration agreement was signed. MW1 is residing in a bungalow in the same factory compound and he has to go out and return through the factory gate. He also feared that in case the arbitration agreement is not signed any untoward incident could happen. On two other previous occasions the same workers during strike period prevented the Managing Director and the manager of the factory from going out of their residence. It was only after the arrival of police these two persons were allowed to go out during the previous strike period. MW1 anticipated the repetition of the same thing this time also. He is the Managing partner and Director of other institutions. In case the workers prevented him from going out he would not be able to attend to his other duties. It is fearing this also that he signed the Arbitration agreement. Due to picketing the management was not able to carry on the day to day administration work. In the cross-examination it is admitted by MW1 that he was not prevented by workers from going out. He signed the Arbitration agreement in the presence of the Cannanore Revenue Divisional Officer and Tahsildar. He also admitted that he did not state the presence of the wet yarn in the factory in the affidavit supporting these petitions. Strike and picketing were peaceful and there was no violence. Revenue Divisional Officer and Tahsildar have attested in the Arbitration agreement as witnesses. He admitted that he signed in a second agreement after one month from the date of the first agreement. The first Arbitration agreement was signed

on 20-4-1960 and that was not in the proper form. So, on 12-5-1960, he again signed in another agreement. There was no criminal case in connection with the strike or picketing. The management also got strike notice, but the strike was started not on the date given in the notice but earlier. There was also difference of opinion as to the choice of the Arbitrator. The management insisted as Arbitrator a Judge. The date of signing the Arbitration agreement was fixed by District Labour Officer and the correct Arbitration agreement was signed on 12-5-1960. MW2, Kannan is a maistry. He stated that during the time of previous strike the workers did not permit the Managing Director to go out of his residence. MW3 Sri V. Appu Nair is the Sub-Inspector of Police, Payangadi. He stated that there was police bandost during the strike days. The strength of the police was increased after two days of the strike to see that no untoward incident happened. WW1 Shri P. Raman is the Secretary of the Kulappuram Spinning and Weaving Mills Workers' Union. WW1 stated that there was conciliation talks leading to the Arbitration agreement and the union representative took part in all the conciliation conferences and the management did not take part in any of the conciliation conferences. The last conciliation conference was held in the factory premises. The Managing Director was out of station, during the time of the last talk. The union issued strike notices on two occasions on 15-3-1960 and 29-3-1960 respectively. The strike was commenced on 18-4-1960 and was withdrawn at 3.30 p.m. on 20-4-1960 and there was work in the factory from 21-4-1960. The strike was withdrawn because of the Arbitration agreement. The first agreement was not in the proper form. So, a second agreement had to be executed on a subsequent date. The second agreement was executed by the mediation of the Labour Officer. Exts. W1 and W2 are the Arbitration agreements. Exts. W3 and W4 are the letters written by the District Labour Officer to the management and the reply of the management to the District Labour Officer. He stated further that there was no coercion on the part of the workers in making the management sign the agreement.

6. The strike and picketing were peaceful and this is admitted by the Managing Director MW1. Nobody was charge-sheeted by police in connection with this and there was no untoward incident in connection with the strike. Strike was started on 18-4-1960 and was withdrawn in the after noon of 20-4-1960 on signing the Arbitration agreement and normal work was resumed in the factory from 21-4-1960. MW1 stated in his cross-examination that the management got strike notice only after the commencement of the strike. Except making this statement from the witness box in the cross-examination the management did not do anything to prove the fact that the commencement of the strike was without notice. The management filed M.P. 150/60 on 23-9-1960 calling upon the unions for admitting the following facts for the purpose of this M. P. matter.

(1) That there was conciliation proceedings between the management and the workers from 5-1-1960.

(2) That the strike was started on 18-4-1960.

(3) That the Arbitration agreement was entered into before the conciliation officer on 20-4-1960.

(4) That the strike was withdrawn on 20-4-1960.

(5) That the unions have on 15-4-1960 and 16-4-1960 given in writing of their intention to strike to the management.

The union gave the following replies to these questions.

(1) The conciliation proceedings commenced on 5-1-1960 and was concluded on 21-3-1960 when the failure report was submitted.

(2) Yes.

(3) The agreement was entered into on 20-4-1960. This agreement was not in proper form. The agreement in proper form was signed from the District Labour Officer's Office on 12-5-1960.

(4) Yes.

(5) The original strike notice was given on 15th March, 1960. There was conciliation on 19-3-1960 but the management representative was not present ,and so the failure report was submitted. The notices sent on 15-4-1960 and 16-4-1960 are only in continuation of the previous notices. By question No. 4 in M.P. 150|60, the management admits having received strike notices from unions on 15-4-1960 and 16-4-1960 respectively. In the answers given by the Secretaries of the unions they further state that the notices sent to the management on 15-4-1960 and 16-4-1960 were only in continuation of the previous notice dated 15-3-1960. MW1 admits in his chief examination that he was given information about the strike previous to the commencement of the strike. The unions had given him information on 15th and 16th April, 1960 stating that the workers would start strike. The exact words used by MW1 in his evidence are extracted below:

"[illegible] 18-[illegible] strike [illegible]. [illegible] 15-[illegible] 16-[illegible] strike [illegible]. strike [illegible] 20-[illegible] [illegible]."

The union Secretary WW1 P. Raman stated in his evidence that strike notices were given on 15-3-1960 and 20-3-1960. There is no evidence to contradict this. The management did not file in court the strike notices sent to them by unions. The statement of MW1, in his cross-examination that strike was commenced not on the dates mentioned in the strike notices and he actually got the notices after the commencement of the strike is not supported by any other evidence either documentary or oral. By producing the strike notices the management could have very easily proved that the strike was commenced not on the date mentioned in the notices and the notices were actually received after the commencement of the strike. This statement of MW1 stands contradictory to the version spoken by him in his chief examination and also to the admission made by the management in question No. 4 served on the unions for answer. I find that the unions had given the management notices pointing out the date of the commencement of the strike and strike was started only after that date.

7. "By the long struggle between labour and capital the workers acquired two fundamental rights namely (i) the right to organise themselves to protect their interests without molestation or victimisation by the employers and (ii) the right to resort to strike as a means for enforcing their demands. Accordingly the common law right of an employer to discharge or dismiss an employee or what is popularly known in some country as "the right to hire and fire" has been subjected to statutory

restrictions. In India the right to form unions of workmen, the procedure for its registration and the right to compel the employers to recognise these unions are covered by statute. The general right to resort to strike has also been recognised by defining the circumstances under which a strike is to be regarded as illegal and in the case of public utility concerns that right has been further regulated by providing for previous notice of strike for a stated period being given and also by giving Government power to prohibit its continuance with proper safeguards in the interest of labour by providing for all almost obligatory reference by Government for the purpose of compulsory arbitration of the dispute raised in the strike notice." 1951 II LLJ. 314.

8. Section 10 of the Contract Act lays down what agreements are contracts. Section 10 of the Contract Act is extracted below:

"All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in India and not hereby expressly repealed by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents."

In determining whether an agreement is enforceable, or not, that is, whether it is a contract, four points have to be considered namely (i) competency of the parties, (ii) freedom of consent of the parties, (iii) lawfulness of consideration and (iv) lawfulness of the object. An agreement which satisfies these four requirements are enforceable agreements. The management contends that they were forced into this arbitration agreement and the same is not enforceable. If the management persons were forced into the arbitration agreement there is want of free consent on their part to this agreement and the agreement does not become enforceable and therefore the reference order based on this agreement is illegal and this court cannot get jurisdiction to pass an award on the basis of an illegal agreement. The fact that the strike was illegal does not make any difference in the nature consent given by the management. I.D. No. 91|59 between the same management and their workmen was pending adjudication before this court during the strike period and according to the provisions of sections 23 and 24 of the Industrial Disputes Act, the strike is illegal. The management also maintains that the strike was during the pendency conciliation proceedings leading to this arbitration agreement. There is satisfactory evidence to prove the date of the commencement of the conciliation proceedings but there is no evidence to show on which date conciliation proceedings came to an end. Anyhow strike was illegal. The fact that the strike was illegal does not make any difference in the nature of the right of the two contracting parties to the arbitration agreement. The only point that arises for consideration is whether the arbitration agreement was brought by coercion or not.

9. The Managing Director Shri Sumithran Aaron gives two instances which forced him to join in the execution of the arbitration agreement namely (i) the fear of loosing a large quantity of wet yarn, (ii) the apprehension of workers preventing him from going out of his bungalow and attending to his duties. First he stated that it was the fear of loosing a large quantity of wet yarn which forced him to sign the agreement. When the strike commenced, according to him, there was a large quantity of

wet yarn in the factory. The yarn if remained wet for 4 or 5 days would be damaged. He executed the agreement to save the wet yarn from being lost. The management didnot produced any documents to show the presence of any wet yarn at the commencement of the strike. There is also no evidence to show for how many days the yarn would remain wet without deteriorating. Secondly the workers had given notice of strike. It was not quite right on the part of the management to keep the yarn wet on the date when the strike commenced. They knew very well when the strike would commence and there was no justification on the part of the management to keep the yarn wet on 18-4-1960 knowing that the workers would strike work from that date. MW1 stated in his evidence that during former strike days, the union permitted a skeleton staff to attend the urgent work in the factory but this time they did not allow this. But the management has not made any allegation about this matter in their petition or pleadings. There is no evidence to show the demand of the management either to the workers or union for permission to allow a skeleton staff to work during strike days. The existence of the wet yarn and the refusal of the union for permission for working a skeleton staff are not proved by management. The workers were not asked to dry the yarn; they were not made aware of the probable loss of the wet yarn. Take it for argument sake, that there was wet yarn in the factory and MW1 thought the same would be lost in case the strike continued for 4 to 5 days. This fear of the loss of yarn is only a remote consequence of a normal strike and cannot be considered as a circumstances which forced him to enter into an agreement. Secondly Shri Aaron stated that during the previous strike the same workers did not allow the Managing Director and the Factory Manager to go out of their bungalows. Shri Aaron was residing in a bungalow in the factory premises. He admitted in his evidence that he was not prevented by the workers from going out of the factory. He apprehended that there was a possibility of the workers preventing him from going out of the factory as they did during the previous strike. If the workers prevented him from going out as they did during the previous strike he would not be able to attend to his duties. This fear also contributed to his signing the arbitration agreement. This ground was a mere imaginary one and has nothing to do with the realities of the incidents in connection with the strike.

10. I have already found that the management has not proved the existence of wet yarn in the factory on 18-4-1960. There is also no evidence of any demand by the management for the working of a skeleton staff for attending the urgent works during strike days. The first ground of fear the management has not proved. Even if there was wet yarn, the fear of loosing the same amounts only to a remote consequence of a strike. The second ground is only an imaginary one and has nothing to do with the strike incidents. The parties entered into the arbitration agreement on 20-4-1960. This was only in the nature of a preliminary agreement. This is not the arbitration agreement referred to adjudication. In this agreement which is marked as Ext. W1, the name of the arbitrator is not given; it was then left to the choice of the Government. Ext. W1 was signed in the presence of the Revenue Divisional Officer, Tellicherry and Thasildar, Cannanore. None of them made use of any force. On 12-5-1960 long after the strike Ext. W2 arbitration agreement was signed by parties in the presence of the District

Labour officer and other responsible officers. Ext. W2 forms the basis of the reference order. Even Ext. W2 agreement was not in the form prescribed by Government and was to a certain extent defective. This also did not contain all the details required under the rules. The mistakes in Ext. W2 agreement were found out by the Union Secretaries and they wrote letters to the Cannanore District Labour Officer pointing out these mistakes. Then the District Labour Officer wrote Ext. W4 letter on 2-6-1960 to Shri Sumithran Aaron which is extracted below:

"It is stated by the Secretaries of the two unions that a serious omission has occurred in the arbitration agreement executed by you and the union on 12-5-1960. The establishment involved in the dispute for which arbitration agreement has been executed, is not only the Kulapuram Spinning and Weaving Mills as stated in the agreement but also the Exelsior Handloom Weaving Factory, P.O. Mandur and its branches at Cannanore and Peerankathodan. It has also been stated that the total number of workers affected by the dispute and to be included in the agreement are 438. I, therefore, request you to make it convenience for you to be present at the office of your Factory at Kulappuram at 3 p.m. on 9-6-1960 to execute a revised arbitration agreement in the prescribed form".

To Ext. W4 letter, Shri Aaron gave Ext. W3 reply dated 9-6-1960 which is given below:

"In reply to your above letter addressed to Sri Sumithran Aaron, we confirm the telephone conversation was had with you today during which we informed you that Sri Sumithran Aaron will not be in the office today and tomorrow and therefore, to postpone execution of the revised arbitration agreement to any convenient date after prior consultation with him.

Thanking you,

Yours faithfully,

For the Kulappuram Spinning and Weaving Mills Ltd.,

Sd. Director."

The revised arbitration agreement was signed by the parties after 9-6-1960. Ext. W1 dated 20-4-1960 evidences only a preliminary agreement by parties agreeing to enter into a future agreement to refer the matters of dispute mentioned therein to the arbitration a person nominated by Government on a subsequent date. The Government subsequently nominates a person as arbitrator and the parties approved the choice of that person as arbitrator and thereafter entered into an agreement for the reference of the matters in dispute between them to an arbitrator. That agreement is Ext. W2. Ext. W1 was executed during strike period but without any threat or force. Ext. W2 the agreement which forms the basis of the reference order was entered into on 12-5-1960, long after the strike. If MW1 was not willing to enter into an arbitration agreement on 12-5-1960 he could have refused to sign Ext. W2. There was no strike then. Even Ext. W2 was not in the proper form which was subsequently rectified after 9-6-1960. The final revised arbitration agreement came into existence long after the strike, when there was no fear of strike. It is not correct to say that the arbitration agreement was brought by coercion.

11. The right to resort to strike as a means for enforcing the demands of workmen is a fundamental right of the worker acquired by his long struggle with capital. The general right to resort to strike has also been recognised by statute. The workers in the instant case by commencing a strike has only resorted to a means allowed to them for enforcing their demands. If MW1 by fearing the loss of wet yarn, entered into an arbitration agreement, it is only natural and remote consequence of a strike and the same does not amount coercion so as to invalidate the arbitration agreement. I find that the arbitration agreement is an enforceable agreement and reference order of the Government based on this agreement is valid and the court has jurisdiction to adjudicate upon the matters of dispute referred. I find the preliminary point against the management and dismiss M. P. 151 and 152 of 1960 without costs. The arbitration references 1 and 2 of 1960 are posted to 10-7-1961 for evidence. This preliminary award is to become enforceable after thirty days of its publication in the Government Gazette.

Camp: Cannanore,
12-5-1961.

V. U. JOSEPH,
Industrial Tribunal.

APPENDIX

Documents marked on the side of union.

W1. Arbitration agreement dated 20-4-1960.
W2. Arbitration agreement dated 12-5-1960.
W3. Letter from the management to the District Labour Officer, Cannanore dated 9-6-1960.
W4. Letter from the District Labour Officer to the management dated 2-6-1960.

Witnesses on the side of the management.

MW1. Shri Sumithran Aaron.
MW2. Sri Kannan.
MW3. Sri V. Appu Nair, Inspector of Police, Hosdurg.

Witness on the side of the union.

WW1. Sri P. Raman.

Kerala Gazette No. 27 dated 4th July 1961.
PART I

GOVERNMENT OF KERALA

Health and Labour Department

NOTIFICATION

No. 44093|L5|61|HLD. *Dated, Trivandrum, 17th May 1961.*

The award of the Industrial Tribunal, Kozhikode, in respect of the dispute between the Management of Parasparasahayi Printing Works Ltd., Kozhikode, and their workmen represented by the Secretary, Kozhikode Press Workers' Union, Kottaparamba P.O., Kozhikode, received by Government on 15-5-1961 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,
K. C. SANKARANARAYANAN,
Additional Secretary.

Before the Court of the Industrial Tribunal, Kozhikode.

(Friday, the 12th day of May, Nineteen hundred and sixty one)

Present:

SHRI V. U. JOSEPH, B.A., B.L.,
Industrial Tribunal, Calicut and Ernakulam

INDUSTRIAL DISPUTE No. 42 of 1960
(On the files of the Industrial Tribunal Court, Kozhikode)

Between

THE MANAGER
PARASPARASAHAYI PRINTING WORKS LTD., KOZHIKODE

And

THE SECRETARY
KOZHIKODE PRESS WORKERS' UNION, KOTTAPARAMBA-P.O.,
KOZHIKODE.

Representatives:

Shri K. P. Achutha Menon, B.A., B.L. *For Management.*
and
Shri K. P. Radhakrishna Menon, B.A., B.L.,
Advocates, Calicut.

Shri K. Bhaskaran Nair, B.A., B.L.,
Advocate, Calicut. *For Union.*

AWARD

By order No. 42725|L5|60-1 of the Health and Labour Department of the Government of Kerala dated 20-7-1960, the Industrial Dispute between the parties described above was referred to this court for adjudication. The issues referred to adjudication are the following:—

1. Fixation of scale of pay.
2. Special bonus for Onam and Vishu.
3. Gratuity.
4. Merger of existing allowances in basic wages.

2. In the union statement it is contended that the wages paid to the Compositor, Binder and Printer are miserably low. The union therefore request to award the following grades to these workers:—

Compositor and Binder 45-2½-70-3½-105.

Printer 45-3-75-3½-110.

This is the rate recommended by the Master Printers' Association of Calicut of which almost all the presses in Calicut are members. The association has also recommended one increment towards weightage and also another general increment to all the workers. Under issue No. 2, the union contends that the workers are paid half a month's salary towards bonus for Vishu and Onam, apart from the bonus available on the basis of profits. The union requests for the enhancement of the Onam and Vishu bonus to 3|4th month's salary. Under issue No. 3 the union contends that the management has got sufficient capacity to pay gratuity to the workers. The existence of a Provident Fund scheme is no bar to the introduction of a gratuity scheme. The union prays to pass an award granting all the above benefits.

3. The management contends that they have in the past given increments to all the workers and also have pushed up the minimum of all the workers who were getting below Rs. 40 monthly. They contend that they have no further financial stability to meet additional burden. Under issue No. 2 the management admits the payment of special allowance to all the employees for Onam and Vishu irrespective of their trading results. What they are paying for Onam and Vishu is not bonus but an allowance. The management contends that they do not have the financial stability to introduce any scheme of gratuity at present. Under issue No. 4 the management opposes the merger of the allowances in the basic pay. According to the management the workers are not entitled to any relief under any of the issues. As appendix to the reply statement the management has given the pay and allowance of all the 24 workers. The management has also a case that this court has no jurisdiction to pass an award on the issues referred to adjudication as the matter is governed by Co-operative Societies Act and its bye-laws. The matters referred to adjudication are the matters touching the business of the co-operative society and the Co-operative Registrar alone has got jurisdiction to deal with it.

4. The union examined WW1 and marked Ext. W1 to W32. The management examined MW1 and marked Exts. M1 to M16.

5. *Issues 1 and 4:*

For the press workers Government has fixed Minimum Wages. In paragraph 20 of the report of the committee gives their recommendations in terms of the Act. The following is paragraph 20 of the report:—

"(i) For purpose of the minimum wages recommended, there shall be two broad classifications of workers, namely, unskilled and skilled. Cleaner, Sweeper, peon, watchmen and mazdoor will come under the category of unskilled. All other workers who have put in a service of 18 months in a press shall be regarded as skilled.

(ii) The following consolidated wages (inclusive of D.A.) shall be paid to unskilled and skilled workers for a month of 28,29,30 and 31 days

as per the Christian Calendar in the case of workers who are given a paid weekly holiday and for a month of 26 days in the case of workers who are not given a paid weekly off:—

Unskilled	Rs. 35
Skilled	Rs. 40

Apprentices shall be paid at the following rates:—

(i) At the end of the first six months Rs. 20, at the end of the 2nd six months Rs. 30 and at the end of the third six months Rs. 40. Adolescents shall get 75% of the above rates."

6. In the management establishment there are 24 workers; 8 compositors, 4 machine men; 11 binders and one probationer (unskilled worker) and I give below the basic pay and dearness allowance of all the 24 workers:

Sl. No. (1)	*Name* (2)	*Designation* (3)	*Basic wage* (4) Rs.	nP.	*D.A.* (5) Rs.	nP.	*Total* (6) Rs.	nP.
1	M. Balakrishnan Nair	Compositor	50	70	27	50	75	20
2	P. M. Velayudhan Nair	"	48	00	25	00	73	00
3	C. Sankaran Nair	"	47	10	25	00	72	10
4	T. Gopalan Nair	"	45	00	25	00	70	00
5	M. Krishnan Nair	"	43	20	25	00	68	20
6	K. Bhaskaran	"	33	00	25	00	58	00
7	P. Unnikrishna Menon	"	29	10	25	00	54	10
8	P. Velayudhan Kutty Nair	"	28	20	25	00	53	10
9	E. Velayudhan	Machineman	48	85	25	00	73	85
10	P. C. Velayudhan Nair	"	35	70	25	00	60	70
11	K. Padmanabhan	"	28	80	25	00	53	80
12	N. Kunhan Nair	"	34	20	22	50	56	70
13	N. V. Raghavan	Binder	49	80	27	50	77	30
14	E. Karunakaran Nair	"	41	40	25	00	66	40
15	P. Raghavan Nair	"	41	40	25	00	66	40
16	V. Apputty	"	33	90	25	00	58	90
17	T. Balakrishnan	"	33	00	25	00	58	00
18	K. Gangadharan Nair	"	28	80	25	00	53	80
19	M. Chekkutty	"	28	10	25	00	53	10
20	P. Sreedharan	"	24	00	22	50	46	50
21	P. Bhaskaran	"	24	00	22	50	46	50
22	C. Chandran	"	24	00	22	50	46	50
23	M. Bharathan	"	24	00	22	50	46	50
24	K. Sreedharan Nair	(Probation, unskilled worker)	25	00				
	Total wages for a month of 30 days						1,416	85

From the existing wages of the workers, it is seen that the workers are paid at present much more than the minimum wages fixed in the notification for press workers. The minimum wages committee recommendations for the press workers came into force on 23-2-1960 and the manage-

ment implemented the samo. The managomont en 23-2-1960 increasod the pay ef Sris P.Sreedharan, P. Bhaskaran, O. Chandran and M. Bharathan to Rs. 45 who were till then getting very low ratos of wagos. An *ex gratia* allowanco of Rs. 5 to oach worker has been given from 1-7-1958 in addition to tho then existing pay. There was another increment of Rs. 2.50 frem 1-1-1958. Frem 1-7-1960 tho doarness allewance was incroased at a flat rate of Rs. 20 per head. In an industry where the minimum wages has been fixed by the Government the wage-rates ef the omployees can be onhanced provided the trading results justify the same. In an industry where minimum wages are fixed, the tribunal cannet fix a rate ef wages below the rates fixed in the minimum wages notification. It is the absolute of the worker to get the minimum wagos. fixed by the Cemmitteo appointed for fixing the minimum wagos. If an empleyer has ne capacity to pay the minimum rates ef wages he has ne right te centinue to run tho industry. If a wage-rate above the minimum rates ef wages is to be awarded in an industry in which minimum ratos ef wages has boen fixod, the Industry must have capacity te pay the enhanced wage-rates for a fairly long period. In the case ef Britannia Building and Iren Company Ltd. (1954 I LLJ 651 at 654) it is laid down as fellows:—"As time-scalos increase the wage-bill year after year which is reflectod in the eost ef productien, such scalos should not, in our epinion, be forced upon the omployer, ef Industrial labeur unless it is established that the empleyer has the present capacity to pay and its financial capacity can be counted upon in future. Thus financial ability and stability are requisito conditions." Similar ebservatiens were made in tho case of the Union Drug Co. Ltd. (1954 I LLJ at 676) "For before incremental scalos can be imposod by adjudication it is essential to see whethor employer weuld be ablo to bear its burdon. The financial condition ef the company must be such as to load to the conclusion that it would be able te pay the incroment year by year fer an appreciable number of years, for wage-scales when settlod are intended to be leng torm schemes." Tho managoment in this case has preduced the profit and loss account ef the years 1955-56, 1956-57 and 1957-58 and they aro Exts. M10, M11 and M12 respectively. The trading results of the year 1955-56 ended in a less ef Rs. 5,677.01 and in the fellowing yoar also the managemont sustained a loss of Rs. 1,223.89. In the year 1957-58 the management was able to mako a prefit of Rs. 1,812. The demand ef the workers is fer introductien of the wages ratos ef Master Printers' Association, Kozhikode. There are 34 printing prosses in Calicut ef which 27 presses have adopted the wago-rates ef the Master Printers' Associatien. The fellowing are the rates of wages in the Master Printers' Asseciatien:—

Compositer and Binder	Rs. 45-2½-70—70-3½-105
Printer	Rs. 45-3-75—75-3½-110.

If the master printers' rates are adopted 4 compesiters will havo to be given Rs. 3½ increments monthly and all tho rest ef the 20 werkers havo te be given an incremont of Rs. 3 menthly altegether making up a total Rs. 74 monthly. So tho yoarly increment will be Rs. 888. The annual additienal wage-bill will ceme to Rs. 888. In 1955-56 and 1956-57 the company sustained losses. The cempany is enly just turning to profit. The profit in ene year after sustaining lesses in two years is not suffictont to lead to the conclusion that it weuld be ablo to pay the increments year after year fer an appreciable number of years. The company has te

work profitably for a few years, at least. Then only the financial stability of the establishment can be counted. The company granted increments to all workers in 1958 and 1960. The wages of the last four workers in the list have been pushed up beyond the minimum fixed in the Minimum Wages notification. The management has no capacity to bear any additional burden at present. The management has not undertaken to pay the master printers' rates. To the union demand the management gave Ext. W15 reply stating they would consider the rates fixed in the master printers' Association. There was no undertaking by the management to pay the rates of the master printers' Association. The workers can take up the question of salary revision again when the company turns the corner and works profitably for a few years.

Issue 2—Special bonus for Onam and Vishu.—The union contends that the workers are paid ½ a month's total emoluments as bonus for Vishu and Onam apart from the payment of bonus on the basis of profit. The union makes a demand to enhance the same to 3/4th month's emoluments. The payment of bonus on these two occasions according to the union, is irrespective of the profits. The management contends that they pay the workers some allowance for Onam and Vishu and the same does not amount to payment of bonus. The practice of paying allowance for Onam and Vishu will continue.

Issue 3—Gratuity.—Gratuity schemes are framed in industrial establishments when the financial position of the establishment is perfectly sound. "It is now well settled by a series of decisions of the appellate Tribunals that where an employer company has the financial capacity, the workmen would be entitled to the benefit of gratuity in addition to the benefits of the provident fund. In considering the financial capacity of the concern, what has to be seen is the general financial stability of the concern. The factors to be considered before granting a scheme of gratuity are the broad aspects of the financial condition of the concern, its profit earning capacity, the profit earned in the past, its reserves, and the possibility of replenishing the reserves, the claim of capital put, having regard to the risk involved, in short the financial stability of the concern". 1956 I LLJ 435. At present the company has no capacity to pay gratuity. The Learned Counsel for the management Shri K. P. Achutha Menon raised a question of jurisdiction. He contended that the matters referred to adjudication are matters touching the business of the co-operative society and the Co-operative Registrar alone is competent to decide the matters of dispute under reference. He also argued that the workers covered by the order of reference are governed by the bye-laws of the co-operative society. Bye-law 18 lays down that no paid employee shall be a member, representative, or officer of any association representing or purporting to represent non-official co-operative employees. Therefore the workers are prohibited from taking membership in a trade union and the reference brought about by such a union is incompetent. A decision on either of these two points is not called for as I do not give any relief to the workers.

The workers are not entitled to any relief. Parties to suffer their respective costs. I pass this award on terms specified above and the same shall become enforceable after thirty days of its publication in the Government Gazette.

Camp: Cannanore,
12-5-1961.

V. U. Joseph,
Industrial Tribunal.

APPENDIX

Exts. marked on the side of the Union:

W1. Copy of charter of demands dated 17-9-1958 by the union.
W2. Printed notice dated 19-9-1958 published by the union.
W3. Copy of letter dated 23-9-1958 from the management to the union.
W4. Copy of letter dated 2-10-1958 from the management to the union.
W5. Copy of reply dated 5-10-1958 from the union to the management.
W6. Copy of concillation notice dated 28-10-1958 from the Assistant Labour Officer, Calicut.
W7. Copy of letter dated 24-3-1959 from the management to the workers.
W8. Copy of notice dated 30-9-1958 from the management to the workers.
W9. Letter from the management dated 11-11-1959 to the workers.
W10. Copy of letter dated 2-1-1960 from the union to the management.
W11. Copy of reply dated 8-1-1960 from the management to the union.
W12. Copy of reply from the union to the opposite party dated 16-1-60.
W13. Copy of the reply from the management dated 8-2-1960 to the union.
W14. Copy of the reply from the union dated 8-2-1960 to the management.
W15. Copy of letter dated 27-2-1960 from the management to the workers.
W16. Copy of the memorandum dated 27-2-1960 from the workers to union.
W17. Copy of letter dated 2-3-1960 from the union to the management.
W18. Copy of the concillation notice dated 4-3-1960.
W19. Copy of the letter dated 5-3-1960 from the union to the management.
W20. Copy of the letter dated 16-3-1960 from union to management.
W21. Copy of the memorandum dated 16-3-1960 from the workers to managemant.
W22. Copy of letter No. B. 269|60 dated 17-3-1960 from the District Labour Officer, Calicut to the Union.
W23. Copy of the letter Ref. No. B. 269|60 dated 17-3-1960 from the District Labour Officer, Calicut to the management.
W24. Copy of the notice dated 22-3-1960 from the management to workers.
W25. Copy of the letter from the petitioner dated 23-3-1960 to the management.
W26. Copy of the reply dated 24-3-1960 from the workers to management.
W27. Copy of the letter dated 24-3-1960 from the District Labour Officer.
W28. Copy of the reply dated 24-3-1960 from the union to District Labour Officer, Calicut.

W29. Copy of the letter dated 24-3-1960 from the union to the management.

W30. Copy of the letter dated 26-3-1960 from the District Labour Officer.

W31. Copy of the agreement dated 25-3-1960 between the union and Deseeya press labour union on the side of workers and the Malabar Master Printers' Association, Calicut.

W32. Decision taken in the meeting of the Master Printers' Association, Calicut.

Exts. marked on the side of the management:

M1. Copy of letter dated 5-6-1957 from the Spl. Deputy Registrar-in-charge Malabar (North) Kozhikode to the Secretary, Kozhikode Press Union.

M2. True copy of resolution No. 1 of the Board of Directors met on 7-9-1958.

M3. Copy of letter dated 12-9-1958 to Sri M. Balakrishnan Nair and others.

M4. Copy of letter dated 2-10-1958 to the Secretary, Kozhikode Press Workers' Union by the management.

M5. True copy of resolution No. 1 of 18-10-1959 of the Board of Directors of the press.

M6. True copy of resolution No. 1(2) of the Board of Directors met on 23-2-1960.

M7. Copy of letter dated 7-3-1960 to the workers of the press by the management.

M8. Copy of letter dated 7-3-1960 to the union by management.

M9. Subsidiary bye-laws regarding service conditions of employees.

M10. Final Audit report for the year 1956-57 of the press.

M11. Final Audit report for the year 1955-56 of the press.

M12. Final Audit report for the year 1957-58 of the press.

M13. Letter dated 16-1-1961 by the management producing documents.

M14. Statement showing the list of office staff and workers of the press and their salaries and wages drawn in the years 1957-58, 1958-59 and 1959-60 separately.

M15. True copy of the resolution No. 6 of the Board of Directors of press met on 12-6-1960.

M16. Proceedings of the press works Committee meeting on 15-3-1960.

Witness Examined on the side of Union:

WW1. C. Gangadharan Nair.

Witness examined on the side of Management:

MW1. T. P. Sadasivan.

GOVERNMENT OF KERALA

Health and Labour Department

NOTIFICATION

No. 48380/L5/61/HLD. *Dated, Trivandrum, 6th June 1961.*

The award of the Industrial Tribunal, Kozhikode under section 33 A of the I. D. Act in respect of the dispute between the Management of Bharat Plywoods and Timber Products Ltd., Baliapattam and Shri T. P. G. Gurukkal, C/o. the Secretary, Bharat Plywoods and Timber Workers' Union, Baliapattam, received by Government on 30-5-1961 is hereby published under Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,
K. C. SANKARANARAYANAN,
Additional Secretary.

Before the Court of the Industrial Tribunal, Calicut.

(Monday, the 29th day of May, Nineteen hundred and sixty-one.)

Present :

SHRI V. U. JOSEPH, B. A., B. L.,
Industrial Tribunal, Calicut & Ernakulam.

INDUSTRIAL DISPUTE No. 58 OF 1960.

(On the files of the Industrial Tribunal Court, Calicut)

Between

SHRI T. P. G. GURUKKAL,
C/o. THE SECRETARY, BHARAT PLYWOODS AND TIMBER WORKERS' UNION, BALIAPATTAM

And

THE MANAGER,
BHARAT PLYWOODS AND TIMBER PRODUCTS LTD., BALIAPATTAM.

Representatives:—

Shri M. K. Nambiar, B. A., B. L., Advocate, Cannanore. — *For Complainant.*

Shri K. Bhaskaran, B. A., B. L., Advocate, Tellicherry. — *For Management.*

AWARD

The above industrial dispute arises from a complaint filed by Shri T. P. G. Gurukkal under Section 33A of the Industrial Disputes Act. The Complainant alleges that the management has violated the provisions of Section 33 of the Industrial

Disputes Act giving rise to right of a complaint under Section 33 A of the Industrial Disputes Act. Industrial Dispute No. 68 of 1959 between the management of Bharat Plywoods and Timber Products Ltd., Baliapattam and their workmen was pending adjudication before this court. The charge against the complainant is that he abused the supervisor Shri P. Gopalan. This is a mere false charge and was foisted upon him. The complainant was suspended during the pendency of I. D. 68 of 1959 without court permission and the same amounts to violation of Section 33 of the Industrial Disputes Act. He prays for the cancellation of the suspension order and payment of wages for the period of suspension.

2. The management filed written objections controverting the allegations in the complaint. They contend that the complainant is not a workman concerned in the dispute in I. D. 68 of 1959 and no permission of this court is necessary to punish him. He abused the supervisor in most filthy and indecent language. An enquiry was constituted into the charge of misconduct and the enquiry officer found him guilty of the charges and recommended suspension for a short period. The management maintains that the worker is not entitled to any relief. The complainant did not file any rejoinder.

3. The management examined the enquiry officer M. V. Narayanan Nambiar as MW1 and marked Exts. M1 to M14. The union did not adduce any evidence, either oral or documentary. The parties were represented by advocates in this court.

4. The complainant was a worker in the Bharat Plywoods and Timber Products Ltd., Baliapattam. He was charge-sheeted for misconduct and an enquiry was conducted into the charges of misconduct. The enquiry officer found him guilty of the charges and he was suspended for a short period. This punishment was inflicted during the pendency of I. D. 68 of 1959, a dispute between the manager, Bharat Plywoods and Timber Products Ltd., and their workmen. It is admitted that the management did not get either the approval or permission before passing the order of suspension. The learned advocate for the management Shri K. Bhaskaran contended that I. D. 68 of 1959 was regarding the dismissal of one Shri Govindan and the complainant Gurukal had nothing to do with that dispute. He is not a workmen concerned in the dispute in I. D. 68 of 1959. Therefore, the learned counsel contended that either approval or permission of the court is necessary for inflicting the punishment of suspension during the pendency of the dispute. The learned counsel for the complainant Shri M. K. Nambiar argued that the dispute in I. D. 68 of 1959 must be taken as one in which every worker in the mill is concerned. Their Lordships of the Supreme Court of India have given a very wide interpretation to the words "workmen concerned in a dispute" in a recent case reported in 1960 I LLJ 551. Their Lordships held that a dispute sponsored by a union is a collective attempt on the part of the entire body of workmen in that establishment and an

award passed is binding on all workers. In that sense when a dispute is referred to adjudication every worker in that establishment becomes concerned in a collective sense in the dispute of a co-worker. Viewing the matter from the interpretation given by Their Lordships of the Supreme Court, it must be held that the complainant is a "workmen concerned" in I. D. 68 of 1959. The following is Section 33, Clause (i) . .

"33 (1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall—

(a) in regard to any matter connected with the dispute alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute,

save with the express permission in writing of the authority before which the proceeding is pending."

According to clause (1) of Section 33 the punishment can be inflicted upon the worker only after getting the express permission from court. It is conceded that the management did not get any such permission. So, the management has violated provisions of Section 33.

5. In a complaint under Section 33 A, the court has to look into two things. First whether there is any violation of the provisions of Section 33. If there is no violation of the provisions of Section 33 the complaint is not maintainable and has to be dismissed. If there is violation of the provisions of Section 33 the complaint becomes maintainable and the court has to go into the merits of the case and decide whether the punishment meted out is correct or not.

6. MW1. Shri M. V. Narayanan Nambiar, the Chief Accountant of the company was the enquiry officer. The charge against the worker is that on 6-4-1960 during the 2nd shift at about 9.45 p. m. the worker Shri T. P. Govindan Gurukkal approached the supervisor P. Gopalan and scolded him in the most filthy and dirty language. It is due to the dropping of the overtime work arranged earlier that Shri Gurukkal scolded the supervisor in this manner. Earlier on the day according to the instruction of the manager the supervisor announced that there might be overtime work after 12-30 p. m. if the same was found necessary. During the interval it was found that overtime work was not necessary and the supervisor sent information in the concerned section stating that there would be no overtime work. This information was given at about 8 p. m. On getting this information the worker concerned approached the supervisor and scolded him. During the enquiry the management examined Shris Balaram, K. P. Ahamed and P. K. Gopalan. The worker also examined a few witnesses. The enquiry officer found the

worker guilty of the charge of misconduct and ordered to suspend him for two weeks. From the evidence of the management witnesses the charge of misconduct against the worker is clearly made out. He has disbelieved the defence witnesses for reasons of his own. The conclusion of the enquiry officer is based on the evidence adduced by the management in the enquiry and is perfectly correct and does not call for any interference by this court. The words used by the worker were really very dirty and the punishment of suspension for a fortnight is very fair and just.

7. I uphold the order of suspension passed by the management against the complainant and find the same is only just and proper in the circumstances of the case. No costs. This award is to become enforceable after 30 days of its publication in the Government Gazette.

Calicut,
29-5-1961.

V. U. JOSEPH,
Industrial Tribunal.

APPENDIX.

Exts. marked on the side of the management.

M 1. Complaint by the supervisor Shri Gopalan to the management dated 6-4-1960.

M 2. Complaint by the supervisor Shri Gopalan to the management dated 6-4-1960.

M 3. Explanation by W3, T. P. Govinda Gurukkal to the management dated 7-4-1960.

M 4. Explanation by W3, T. P. Govinda Gurukkal to the management dated 7-4-1960.

M 5. Letter dated 20-4-1960 to Shri T. P. G. Gurukkal by the management.

M 6. Statement by Shri P. Gopalan in the enquiry.

M 7. Statement by T. P. G. Gurukkal dated 12-4-1960 in the enquiry.

M 8.	Do.	P. K. Gopalan	do.
M 9.	Do.	K. P. Ahamed	do.
M 10.	Do.	U. P. Balaram	do.
M 11.	Do.	M. Kunhambu	do.
M 12.	Do.	O. C. Sankaran Nambiar	do.
M 13.	Do.	E. Kunhambu	do.

M 14. Findings of the enquiry dated 23-4-1960.

Witness examined on the side of management.

MW1. M. V. Narayanan Nambiar.

Kerala Gazette No. 27 dated 4th July 1961.

PART I

Health and Labour Department

NOTIFICATION

No. 48375/L5/61/HLD.

Dated, Trivandrum, 5th June 1961.

The award of the Industrial Tribunal, Kozhikode under section 33A of the I. D. Act in respect of the dispute between the Management of Bharat Plywoods and Timber Products Ltd., Baliapatam, and Smt. K. Janaki C/o the Secretary, Bharat Plywoods & Timber Workers Union, Baliapatam, received by Government on 31-5-1961 is hereby published under Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,
K. C. SANKARANARAYANAN,
Additional Secretary.

Before the Court of the Industrial Tribunal, Calicut

(Monday the 29th day of May, Nineteen hundred) and sixty one)

Present:

SHRI V. U. JOSEPH, B. A., B. L.,
Industrial Tribunal, Calicut and Ernakulam.

INDUSTRIAL DISPUTE No. 61 of 1959.
(On the files of the Calicut Industrial Tribunal Court)

Between

SMT. K. JANAKI,
C/o THE SECRETARY, BHARAT, PLYWOODS AND TIMBER WORKERS' UNION BALIAPATTAM

And

THE MANAGER,
BHARAT PLYWOODS AND TIMBER PRODUCTS LTD., BALIAPATTAM.

Representatives:

Shri M. K. Nambiar, B. A. B. L., Advocate, Cannanore. — For *complainant.*

Shri K. Bhaskaran, B. A. B. L., Advocate, Tellicherry. — For *Management.*

AWARD

The above industrial dispute arises from a complaint filed by Smt. K. Janaki under Section 33 A of the Industrial Disputes Act complaining violation of the provisions of Section 33 of the Industrial Disputes Act by the management of Bharat Plywoods and Timber Products Ltd., Baliapattam. On 21-10-1959, the management suspended her. The charge against her is that on

20-10-1959 at about 4 p. m. the gatemen of the Bharat Plywoods seized a bottle of arrack from her. She was given a charge-sheet and an enquiry was constituted into the charge of misconduct on 22-10-1959. The complainant prayed for the postponement of the enquiry till the disposal of the criminal case charged against her for the same offence by the police. The management did not proceed with the enquiry proceedings as desired by her. In the criminal case the complainant was acquitted on 27-2-1960. The fact that the complainant was acquitted by the Criminal Court was in intimated to the opposite party. Then the management posted the enquiry to 16-3-1960. It is alleged in the complaint that the enquiry proposed to be conducted by the management on 16-3-1960 was dropped. The management asked her explanation again on 9-5-1960 and it is alleged that she submitted her explanation on the same day. Finally she was dismissed on 4-9-1960. The complainant alleges that the order of dismissal is illegal. The complainant prays to pass an order reinstating her.

2. The management filed written objections controverting the allegations in the complaint. In the written objections the management has alleged that they have not violated provisions of Section 33 of the Industrial Disputes Act and the complaint is not maintainable.

3. The management examined MW1 and marked M1 to M18. The worker did not adduce any evidence either oral or documentary. A complaint under Section 33 A is maintainable only if the management violates the provisions of Section 33. Then alone the worker has a right of complaint under Section 33A. The maintainability of a complaint under Section 33 A depends upon the violation of the provisions of Section 33 by the management. In the complaint there is an allegation that the management has violated the provisions of Section 33 of the Industrial Disputes Act; but no details regarding, how, when and in what manner the management has violated the provisions of Section 33 are not given. The allegations in the complaint do not reveal a cause of action for the maintenance of the complaint and therefore this complaint is dismissed without prejudice to her rights to get a reference order direct from Government regarding her dismissal by the management.

4. This complaint is therefore dismissed without costs and the same shall become enforceable after 30 days of its publication in the Government Gazette.

Calicut,
29-5-1961.

V. U. Joseph,
Industrial Tribunal.

APPENDIX.

Exts. marked on the side of management.

M1. Proceedings of the enquiry dated 14-9-1960 by the management.

M2. Letter dated 22-10-1959 from the Secretary of union to the management.

M3. Petition by Sry. K. Janu for adjournment of the enquiry to the management.

M4. Letter dated 21-10-1959 to the management by union

M5. Letter dated 21-10-1959 to Sry. K. Janu by the management.

M6. Letter dated 21-10-1959 to Sry. K. Janu by the management.

M7. Statement of watchman K. Krishnan Nambiar dated 20-10-1959.

M8. Letter by Sry. K. Janu dated 15-3-1960 to the management.

M9. Letter to Sry. K. Janu dated 15-3-1960 by the management.

M10. Statement of Sry. K. Janu dated 16-3-1960.

M11. Statement of Sri T. K. Rajagopalan dated 16-3-1960.

M12. Statement of Sri K. Karunakaran dated 16-3-1960.

M13. Statement of Sri P. Abdulkhader dated 16-3-1960.

M14. Statement of watchman K. Krishnan Nambiar dated 16-3-1960.

M15. Findings of the enquiry officer dated 9-5-1960.

M16. Letter from Sry. K. Janu to the management dated 13-5-1960.

M17. Statement of Sri K. Krishnan Nambiar dated 13-5-1960.

M18 Statement of Sry. K. Janu dated 13-5-1960.

Witness examined on the side of management.

MW1. Sri M. V. Narayanan Nambiar.

Kerala Gazette No. 27 dated 4th July 1961.
PART I

Health and Labour Deaprtment.

NOTIFICATION

No. 48378/L5/61/HLD. *Dated, Trivandrum, 5th June 1961.*

The award of the Industrial Tribunal, Kozhikode in respect of the dispute between the Management of Bharat Saw Mills, Baliapatam, and their workmen represented by the Secretary, Bharat Plywoods and Timber workers Union, Baliapatam, and the Secretary, Bharat Plywoods and Bharat Saw Mills Employees Union, Baliapatam, received by Government on 30-5-1961 is hereby published under Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947.)

By order of the Governor,
K. C. SANKARANARAYANAN,
Additional Secretary.

Before the Court of the Industrial Tribunal, Calicut,
(Monday, the 29th day of May, Nineteen hundred and sixty-one)

Present:

SHRI V. U. JOSEPH, B. A. B. L.,
Industrial Tribunal Calicut and Ernakulam.

INDUSTRIAL DISPUTE No. 62/1960
(On the files of the Industrial Tribunal Court, Calicut)

Between

THE MANAGER
BHARAT SAW MILLS, BALIAPATTAM

And

1. THE SECRETARY
BHARAT PLYWOODS AND TIMBER WORKERS' UNION, BALIAPATTAM.

2. THE SECRETARY
BHARAT PLYWOOD AND BHARAT SAW MILLS EMPLOYEES' UNION, BALIAPATTAM.

Representatives:—

Shri K. Bhaskaran, B. A., B. L., Advocate, Tellicherry. *For Management.*

Shri M. K. Nambiar, B. A. B. L., Advocate, Cannanore. *For Unions.*

AWARD

By order No. 67714/L5/60/H & LD of the Health and Labour Department of the Government of Kerala dated 12-10-1960 the industrial dispute between the parties described above was referred to this court for adjudication. The only issue referred to adjudication is regarding the question of additional bonus for 1958-1959.

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2. Both unions filed separate statements claiming 7 months basic wages towards bonus. Both unions allege that the management has made huge profits to meet the demands of the unions.

3. In the reply statement of the management they contend that the net profit of the year comes only to Rs. 2,668.27 out of which the management paid Rs. 2234.88 towards bonus to the workers and staff. The management contends that what has been paid is far in excess of what the workers are entitled to get under the Bombay Full Bench Formula. The unions filed separate rejoinders controverting the management allegations.

4. The management examined Sri K. C. Kesava Menon the Manager of the Bharat Saw Mills and marked Ext. M1 to M2. The unions did not adduce any evidence either oral or documentary. Ext. M1 is a statement showing the comparative business transacted in the year 1957-1958 and 1958-1959. Exts. M2 is the profit and loss account for the year ended 30th June 1959. Ext. M3 is a statement showing the monthly wage-bill.

5. The management has taken this mill on lease under an agreement from the owners. The yearly rent for the same is Rs. 22,000. Apart from the payment of this rent the management has to keep the machinery in repair. In the year under reference towards machinery maintenance the management had to spent Rs. 14,686. The learned counsel for the unions Sri M. K. Nambiar very seriously attacked these two items of expenditure as too exhorbitant and excessive. But the payment of rent amounting to Rs. 22,000 and the machinery maintenance are done under the terms of contract entered into with the owners of the machinery. These two items of expenditure are really business expenditures of the current year and has to be allowed. The rent of Rs. 22,000 paid to the owner takes in the depreciation and rehabilitation claims of the owner. It is a duty of the owner to replace the machinery when the existing one is worn out. The management has not claimed anything towards depreciation or rehabilitation or other prior charges. Taxes paid also are taken into account in arriving at the net profit. The management has deducted from the profits of the current year Rs. 4,951.67 which is the bonus amount of the previous year, but paid in the current year. This is not a permissible item of expenditure in the current year. Of course the management paid the bonus amount of the previous year in the current year and debited in this year's account. This amount of Rs. 4951·66 must be taken as an item of expenditure in the previous year though actually paid in the current year. For the distribution of bonus the receipts and expenditures of the year under reference is the basis. The profits and the losses of the previous years cannot be carried on to the accounts of the current year in the matter of arriving at the available surplus for distribution of bonus. Neither the profits of the past years can be added to it nor can the loss of the past years be set off against the profits of that particular year. Workmen should not be deprived of bonus by the profits of the particular year being set off against the loss of the past years. A full Bench of the Labour Appellate

Tribunal of India in the Mill Owners' Association,Bombay Vs. Rashtriya Mill Mazdoor Sangh reported in1955 I LLJ 430 has laid down that bonus for the previous year though paid during the year in question; cannot be regarded as an item of expenditure in the trading results of the year in question. Therefore the amount of Rs. 4,951.67 paid in the year under reference towards the bonus of the previous year is not a deductible item of expenditure from the profits of the current year.

	Rs.
The net profit according to Ext. M1 is......	2,668.27.
The amount of bonus paid in the current year towards the bonus of the previous year	4,951.67
	7,619.94

So the amount available for distribution will be Rs. 7,620. The monthly wage bill of the workers and staff comes to Rs. 1,120. It has been laid down by Their Lordships of the Supreme Court in Rajeendra Mills Ltd. case reported in 1960 II LLJ 53 that both labour and capital must share 50 per cent of the emergence of the available surplus after taking into consideration the income-tax rebate returnable to the management on the amount of the bonus paid. 4½ months basic wages comes to Rs. 5040. If 4½ months' basic wages is paid to staff and workers the balance of the available surplus left to the management will be Rs. 2,580. To this amount the income Tax rebate returnable to the management has to be added which comes to Rs. 2,520 together the share of the management comes to Rs. 5,100. When the workers get Rs. 5,040 the management gets Rs. 5,100. This is a fair distribution of the available surplus. The management has already paid 2 months basic wage to the workers and staff. They are entitled to get only 2½ months' basic wages as additional bonus.

6. The staff and workers of the management concern are entitled to get 2½ months basic wages as additional bonus for 1958-1959, over and above the 2 months' basic wages already paid by the management towards bonus. I pass the award as specified above without costs and the same shall become enforceable after 30 days of its publication in the Government Gazette.

Calicut,
29-5-1961.

V. U. Joseph,
Industrial Tribunal.

APPENDIX.

Exts. marked on the side of management.

M1. Comparative statement of business transacted by the management during the year 1957-1958 and 1958-1959.

M2. Profit and loss account of the management company for the year ended 30-6-1959.

M3. Statement showing monthly wages and salary of the establishment.

Witness examined on the side of the management.

MW1. K. C. Kesava Menon.

Kerala Gazette No. 27 dated 4th July 1961.
PART I

Health and Labour Department

NOTIFICATION

No. 50939/L5/61HLD. *Dated, Trivandrum, 12th June 1961.*

The award of the Industrial Tribunal, Kozhikode in respect of the dispute between the Management of Malabar Weaving Establishment, Calicut, and their workmen represented by the Secretary, Calicut Taluk Textile Workers' Union, Calicut, received by Government on 6-6-1961 is hereby published under Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,
K. C. SANKARANARAYANAN,
Additional Secretary.

Before the Court of the Industrial Tribunal, Calicut.

(*Monday, the 5th day of June, Nineteen hundred and sixty-one*)

Present:

SHRI V. U. JOSEPH, B. A., B. L.,
Industrial Tribunal, Calicut and Ernakulam.

INDUSTRIAL DISPUTE No. 65 OF 1960.
(*On the files of the Industrial Tribunal Court, Calicut*)

Between

THE MANAGER,
MALABAR WEAVING ESTABLISHMENT, CALICUT

And

THE SECRETARY,
CALICUT TALUK TEXTILE WORKERS' UNION, KOZHIKODE.

Representatives:—

Management	—	*Ex parte.*
Shri K. Bhaskaran Nair, B. A., B. L., Advocate, Calicut.	—	*For Union.*

AWARD

The industrial dispute between the management of Malabar Weaving Establishment, Calicut and their workmen represented by the Calicut Taluk Textile Workers' Union, Kozhikode was referred to this court, for adjudication by Government order No. 69707/L5/60-1, H & LD of the Health and Labour Department of the Government of Kerala dated 25-10-1960. The reference order contains the following three issues:—

1. Bonus for the year 1959-60.
2. Lock out of the factory on 1-9-1960.

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Government by their order No. 76011/L5/60. H & LD dated 11-11-1960 referred one more issue to adjudication regarding "the denial of employment to 41 workers from 26-9-1960."

2. The Union Secretary contends that the year under reference was a prosperous one for the management and according to the union the management can very easily pay 3 months' total earnings as bonus. Under issue No. 2 the union contends after the failure of the conciliation talks regarding the question of bonus for 1959-60 the union served a protest strike notice on the management. In pursuance of the notice the worker staged a peaceful strike. The police came to the scene by evening. By that time the workers had already left the factory. The following day the workers went for work as usual. But the management denied work to all the workers and put up a notice informing the workers that the factory has been closed. According to the union this was not a closure but a vindictive attitude adopted by the management. The workers are entitled to full wages from 1-9-1960 and also for continuity of service. The action of the management in closing the factory from 1-9-1960 is without any bona fide. Under issue No. 3 the union contends that all the workers were denied employment from 1-9-1960. The management on 23-9-1960 put up a notice on the notice board stating that the majority of workers have expressed regret for having struck work on 31-8-1960. According to the union Secretary this was a false statement. 2 or 3 workers who were siding with the management were asked to sign a statement expressing regret. The workers informed the management that they were not aware of the contents of the alleged statement given by the majority of the workers expressing regret. The union contends that the workers were not guilty of any misconduct. The 41 workers whose case is referred under issue No. 3 have not expressed regret and therefore the management has not given them work. The union contends that they are not guilty of any misconduct. The action of the management in denying work to 41 workers is illegal and these workers are entitled to reinstatement with back wages and continuity of service and the union secretary prays to pass an award granting all these demands.

3. The management in their reply statement contends that the trading results of the year 1959-60 has ended in loss and therefore the workers are not entitled to get any bonus. The management was justified in refusing the demand for bonus. The failure of conciliation talk is due to the unreasonable demand of the workers. The workers struck work on 31-8-1960; the following day after conciliation talk. The workers made a demand for Onam advance. They claimed that there is a practice in the management establishment to pay customary bonus for Onam and on this basis they made a demand for Onam advance. This was a demand by the union without any bona fides. There was no payment of any customary bonus for Onam. The notice of strike was given to the management only one hour before the commencement of the strike proposed to be commenced at 3 P. M. on 31-8-1960. In the notice served on the

management the reasons for strike were (1) refusal of bonus, (2) refusal of Onam advance. Both these demands were unjustifiable demands. Apprehending danger the management contacted the police. The workers staged a strike and the strike was not a peaceful one. There was no discussion for settlement of the dispute during the strike hours. The strikers indulged in vituperative and abusive language against the management and there was an element of criminal intimidation. The strike was therefore anything but peaceful. The police had to intervene in the matter and the workers who remained in the company premises after closing time left the factory after 6.30 P. M. But for the police interference there would have been violence. Under the circumstances the management had no other alternative except to close the factory from 1-9-1960. The management denied that the signatures of the workers in their letter expressing regret were either canvassed by the management or by their partisan workers. It was a voluntary act on the part of the workers. Disciplinary action against the workers who struck work and mis-behaved were not taken due to the pending proceedings. The management was willing to give employment to willing workers who had realised their mistakes and who had therefore expressed regret for what they have done. The management therefore prays that the workers are not entitled to any relief. The union filed a rejoinder controverting the management allegations.

4. The case came up for evidence on 26-4-1961 on which date, the management requested for an adjournment. Advocate Shri K. Bhaskaran Nair appearing for the union very seriously opposed this adjournment move on the ground that 39 workers involved in the dispute are without work and he requested me to expedite the trial and the management was told that there would be no further adjournment. The case was adjourned for evidence of parties and argument to 5-6-1961 on which date neither the management advocate nor the management representatives came to court. Two or three days before the hearing date the manager of the management establishment applied for an adjournment stating that the proprietor is not in station and they are not able to give instruction to their advocate to conduct the case. In view of the urgency of the matter and as he was told that the posting of the case on 5-6-1961 is as a last chance, I thought that there is no merit in adjournment application and the management was declared *ex parte*. The union examined WW1 and 2 and marked Exts. W1 to W30. The management had already produced their balance-sheet for the year 1959-60 and the same was marked as Ext. M1.

5. The workmen in an industrial establishment are entitled to get bonus only if there is available surplus after meeting all the necessary and prior charges. Ext. M1 is the profit and loss account of the management for the year ending 31st March, 1960 which shows a net loss of Rs. 705-17nP. From the figures given in Ext. M1, it appears that this is a correctly prepared balance-sheet and it reveals the correct trading results of the management establishment and I believe in the year under reference

the management has suffered a loss of Rs. 705. Therefore there is no available surplus and the workers are not entitled to get any bonus for 1959-60.

6. There was a strike in the Malabar Weaving Establishment for 2 hours commencing from 3 P. M. on 31-8-1960 and lasting till 5 P. M. on the same day. According to the union the strike was necessitated on refusal by the management to pay Onam advance. The case set up by the union is that there is payment of customary bonus for Onam every year and the workers are entitled to get advance for Onam. But the union has not given any satisfactory proof to establish this custom. In order to get bonus on the basis of custom it is the duty of the union to prove that there has been payment of bonus during Onam continuously for an unbroken period of time irrespective of the profit and loss of the establishment. The union has not produced either documents or oral evidence to prove the payment of customary bonus. The trading result of the year under reference has ended in loss. So the demand of the union to get bonus and the attitude taken by the union to strike work to enforce the payment of such an unjustifiable claim are without merit.

7. In the reply statement of the management they contend that the strike was not peaceful. The workers indulged in vituperative and abusive language against the management and there was an element of criminal intimidation. The strike was therefore according to the management anything but peaceful. The police had to intervene in the matter. But in the correspondence that passed between the management and union this exaggerated version finding in the management reply statement is absent. Ext. W15 dated 29-3-1960 is the copy of notice issued by the management. This is proved by WW1, the union Secretary, in which it is stated that the management locked out the factory due to the behaviour of the workers in such a way as to create hatred in the management. So the cause of lock out is the behaviour of the workers in such a manner as to create hatred in the management. The sudden strike might have created an apprehension of danger in the mind of the management and they might have justifiable reasons to lock out the factory. The intention to strike work was pronounced just one hour before the commencement of the strike. The management was also unable to meet the unreasonable demand of the workers. So the management is justified in locking out the factory to prevent the happening of any untoward incident connected with the strike. So I find that the lock out is fully justifiable and the workers are not entitled to any wages from 1-9-1960 to 26-9-1960.

8. Now we have to consider the case of the 41 workers whose case is referred under issue No. 3. Of the 41 workers 2 women workers were on maternity leave on the strike day and they were subsequently reinstated. Now 39 workers whose names are given as Annexure below are still without work. The management establishment resumed work after lock out on 26-9-1960. The total working force in the establishment is 64.